



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

SEP 04 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Article Number:

Mr. Jerry McCalla
Chief Executive Officer
R3 Energy
25 B South Kahola Road
Council Grove, Kansas 66846

Re: R3 Energy
1722 210th Road
Cottonwood Falls, Kansas 66845

Dear Mr. McCalla:

Letter of Warning/Request for Information

On July 23, 2013, a representative of the U. S. Environmental Protection Agency (EPA) inspected your facility. The inspection was conducted under the authority of Section 3007 of the Resource Conservation and Recovery Act (RCRA).

My staff has reviewed the inspection report and determined that violations of RCRA were documented. We are requesting additional information regarding your facility's compliance status. Enclosed is a list of violations, a list of questions and/or requested information, and instructions to be used in providing your response. Please carefully read and follow these instructions. Your response to this request in accordance with the instructions is required by Section 3007 of RCRA and substantial penalties may result from not complying. Please note that the EPA reserves its right to pursue appropriate enforcement actions, including penalties, for violations discovered as a result of the inspection, regardless of whether the violations were subsequently corrected.



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Within thirty (30) calendar days of receiving this letter, please mail your response to: Edwin G. Buckner PE, AWMD/WEMM, U. S. Environmental Protection Agency, 11201 Renner Blvd., Lenexa, Kansas 66219. To request an extension of the time limit, follow the instructions in the enclosure. Please direct all questions concerning this letter to Mr. Buckner, of my staff, at 913-551-7621 or buckner.edwin@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Toensing', is written over the printed name.

Donald Toensing, Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

Enclosures (3)

cc: Mr. Eric Shoults, Director, R3 Energy, ericshoults@fairpoint.net
Ms. Rebecca Wenner, Kansas Department of Health and Environment
Kansas Department of Health and Environment South Central District Office

List of Violations
R3 Energy
Cottonwood Falls, Kansas

Kansas Authorized Regulations (KAR) 28-31-262 adopts 40 Code of Federal Regulations (CFR) 262 by reference. 40 CFR 262.11 requires a generator of solid waste to determine if the solid waste it generates is hazardous as defined in the regulations. On July 23, 2013, an EPA inspector observed various chemicals and materials stored at the R3 Energy facility that had the appearance of solid waste. The facility failed to make a hazardous waste determination on these wastes as required by the regulations. The inspector provided a list of these materials to the facility at the conclusion of the inspection as an attachment to her Notice of Violation (NOV). That list is replicated herein with pertinent additions.

1. 20 to 30 full 1 quart cans of biodiesel retain samples
2. Approximately 1/3-full, 55-gallon drum of drying agent
3. Laboratory Chemicals
 - a. 1-gallon jug acetone
 - b. 1-gallon jug 50:50 IPA/toluene
 - c. beakers of process samples
 - d. Muriatic Acid
 - e. Other laboratory chemicals
4. Three polishing 230-gallon totes (~3/4, ~1/2 & ~3/4 full)
5. Approximately eight used filter socks in Process Area and filter socks in general trash
6. Oil/Mixes of Process Chemicals
 - Three totes of soy/soap (1/2, 2/3, 3/4)
 - One tote soap labeled waste
7. Used Resin
 - 31 – 90 to 100 pound drums
 - Seven – 250 pound fiber drums
8. Paint related material on second floor
 - a. One-gallon square cans
 - b. Five-gallon pails
 - c. One-gallon round cans
9. Glycerin shipped for dust control
10. Numerous puddles of material accumulating on the floor

Requested Information
R3 Energy
Cottonwood Falls, Kansas

On August 6, 2013, the facility emailed to the EPA inspector a response to the NOV issued during the inspection. That response was meant to identify the waste streams listed in the NOV that were hazardous waste and describe each waste stream's disposition. The EPA has questions regarding that response.

1. Biodiesel retained samples in one quart cans. R3 Energy identified this waste stream as "used oil," yet 40 CFR 279.1 defines used oil as any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities. It would appear that retained biodiesel samples do not meet this definition. If the waste stream is appropriately reintroduced into the production process, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
2. Ethanox 4760. R3 Energy identified this waste stream as "used oil," but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
- 3.a. Lab Chemicals – Acetone. If the waste stream is added back into the process as a useable component, it is no longer a waste. If the waste stream does not positively contribute to the process, you may not introduce it into the process merely as a means of disposal. Please modify your hazardous waste determination to accurately reflect how the waste was disposed of.
- 3.b. Lab Chemicals – IPA/Toluene 50/50. If the waste stream is added back into the process as a useable component, it is no longer a waste. If the waste stream does not positively contribute to the process, you may not introduce it into the process merely as a means of disposal. Please modify your hazardous waste determination to accurately reflect how the waste was disposed of.
- 3.c. Lab Chemicals – Beakers of process samples. R3 Energy identified this waste stream as "used oil," but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
- 3.d. Lab Chemicals – Muriatic acid. If this waste stream is being used as a viable product, then it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
- 3.e. Lab Chemicals – Other chemicals in lab. R3 Energy identified this waste stream as "used oil," but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
4. Polishing Totes R3 Energy identified this waste stream as "used oil," but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
5. Filter Socks. No comment.

6. Oil-Soap Mixes. R3 Energy identified this waste stream as “used oil,” but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
7. Resin. R3 Energy identified this waste stream as “used oil,” but, as above, it is not a used oil. If it is a valuable component of the final product, it is no longer a waste. Please modify your hazardous waste determination to accurately classify this waste stream.
8. Paint Related Material – Part A & B Epoxy Resin. As a waste determination, please do not indicate “N/A” since a hazardous waste determination is applicable to all generated solid waste. If you determine the material is not a waste, but rather a valuable commodity, please indicate such.
8. Paint Related Material – Latex Paint. Latex paint is not a universal waste regulated under 40 CFR 273. If the paint is usable and intended for use, please indicate that it is a product, not a waste.
9. Glycerin shipped for dust control. Often glycerin generated by biodiesel plants can be caustic or ignitable because of retained catalyst or methanol. Placing the glycerin on the ground constitutes disposal. Please determine if this glycerin was a hazardous waste.
10. Material Spilled Upon the Floor. This waste stream was not listed in the Notice of Violation, but it exists and a hazardous waste determination has not been made for it. Please identify the spilled materials and determine if they are hazardous wastes.

For all hazardous wastes introduced into the process, the hazardous waste must contribute to the process. Hazardous wastes introduced into the process that do not contribute to the process have received illegal treatment. Once generated, a hazardous waste must be appropriately managed as hazardous waste until it is introduced into the process. The generator has one year to recycle the hazardous waste in the process before the generator must obtain a storage permit. Hazardous waste that does not contribute to the process must be properly disposed of in accordance with KDHE hazardous waste regulations.

3007 RESPONSE INSTRUCTIONS

- Identify the Person(s) responding to this request on your behalf.
- Address each numbered item separately, and precede each answer with the number of the item to which it responds.
- For each numbered item, identify all documents consulted, examined, or referred to in the preparation of the answer, or that contain information responsive to the requested item. Provide true, accurate, and legible copies of all such documents. (If information responsive to an item is available but there are no relevant source documents, you must still provide the information.)
- For each document provided, indicate on the document (or in some similar manner) the number of the item to which it responds.
- For each numbered item, identify all persons consulted in the preparation of the answer.
- For purposes of this request, the term "you" or "your" refers to the company, corporation and any officer, principal, agent employee, or any other person(s) associated in any capacity.
- If information responsive to a requested item is not in your possession, identify the person(s) from whom the information may be obtained.
- If information that is not known or available at the time you make your response later becomes known or available to you, you must supplement your response.
- If, at any time after you submit your response, you find that any part of the information you submitted is incomplete, false, or misrepresents the truth, you must notify the EPA immediately.
- You must provide the requested information even though you consider it confidential information or trade secrets. If you want to make a confidentiality claim covering part or all of the information submitted, in accordance with 40 CFR 2.203(b), you must do so by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend that identifies the material with words such as "trade secret," "proprietary," or "company confidential." Please make such claims in a bold, clearly identifiable manner, such that immediately upon viewing the information it is evident that a claim of confidentiality has been made.
- The EPA will disclose this information only to the extent and by the means described in 40 CFR Part 2, Subpart B., provided that it qualifies as confidential business information.
- A request for an extension to the time limit for responding must be in writing and must be postmarked within five (5) calendar days of receipt of this information request. Address it to the person identified in the cover letter to receive your response.
- Copies of the Code of Federal Regulations may be obtained from the U.S. Government Bookstores or on the Internet at www.epa.gov/epahome/cfr40.htm.
- This request for information is not subject to the approval requirements of the Paperwork Reduction Act of 1980.
- The EPA encourages you to conserve resources. Suggested methods include use of recycled paper, printing on both sides (duplex printing), and when possible submitting documents electronically (i.e., email or compact discs). If hard copy submittals are necessary, please do not submit documents in binders.

Not responding to this information request within the stated time limit and in accordance with these instructions may subject your facility to an enforcement action which could include the imposition of penalties of up to \$37,500 per violation, per day of continued noncompliance. Providing false, fictitious, or fraudulent statements or representations could lead to criminal penalties.